THE ARKANSAS FEED LAW

ACT 726 of 1997

"An Act to regulate the manufacture and distribution of commercial feeds in the state of Arkansas; and

SECTION 1. (2-37-101) Title.

This act shall be known as the "Arkansas Feed Law of 1997".

SECTION 2. (3-37-102) Enforcing Agency.

This act shall be administered by the State Plant Board.

SECTION 3. (2-37-103) Definitions of Words and Terms.

When used in this act:

(a) "Board" means the State Plant Board.

(b) "Brand name" means any word, name, symbol, device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(c) "Commercial feed" means all materials or combination of materials which are distributed for use as feed or for mixing in feed, unless such materials are specifically exempted. Unmixed whole seeds, when such whole seeds are not adulterated, are exempt. The board by rule may exempt from this definition, or from specific provisions of this act, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds or substances are not intermixed with other materials, and are not adulterated. Feed supplied to contract feeders and feed ingredients supplied to integrated operators are not commercial feed and are therefore exempt if granted an exemption license in accordance with Section 4 of this act. Furthermore, exchanges of feed or feed ingredients between or among integrated operators, who have been granted an exemption license as provided in Section 4 of this act, are not commercial feed and are therefore not subject to the provisions of this act. The board by rule may exempt from this definition, or from certain provisions of this act certain pet food or specialty pet food.

(d) "Contract feeder" means a person, who as an independent contractor, feeds animals pursuant to a contract whereby such feed is supplied, furnished, or otherwise provided such person and whereby such person’s remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

(e) "Customer-formula feed" means commercial feed which consists of a mixture of commercial feeds and/or feed ingredients each batch of which is manufactured according to the specific instructions of the final purchaser.

(f) "Distribute" means to offer for sale, sell, exchange, or barter, commercial feed.

(g) "Distributor" means any person who distributes.

(h) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure of any function of the animal body.

(i) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(j) "Integrated operator" means a person who contracts with a contract feeder to supply feed and pays that person based on all or in part by feed consumption, mortality, profits, or amount or quality of product produced.

(k) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(l) "Labeling" means all labels and other written, printed, or graphic matter (1) upon a commercial feed or any of its containers or wrapper or (2) accompanying such commercial feed.

(m) "Manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

(n) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(o) "Official sample" means a sample of feed taken by the board or its agent in accordance with the provisions of Sections 11(c), (e), or (f) of this act.

(p) "Percent" or "percentages" means percentages by weights.

(q) "Person" includes individual, partnership, corporation, and association.

(r) "Pet" means any domesticated animal normally maintained in or near the households of the owners thereof.

(s) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

(t) "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

(u) "Quantity statement" means the net weight (mass), net volume (liquid or dry) or count.

(v) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacines, birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

(w) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(x) "Ton" means a net weight of two thousand pounds (2,000#) avoirdupois.

SECTION 4. (2-37-104) Registration and Licensing.

(a) Any person:

(1) Who manufactures a commercial feed within this state; or

(2) Who distributes a commercial feed in or into the state; or

(3) Whose name appears on the label of a commercial feed as guarantor, shall obtain a license for each facility which distributes in or into the state authorizing him to manufacture or distribute commercial feed before he engages in such activity. Any person who makes only retail sales of commercial feed which bears labeling or other approved indication that the commercial feed is from a licensed manufacturer, guarantor, or distributor who has assumed full responsibility for the tonnage inspection fee due under this act is not required to obtain a license.

(b) Any person who is required to obtain a license shall submit an application on a form provided or approved by the board accompanied by a license fee of ten dollars ($10.00) paid to the board for each facility. The board shall remit such license fees to the State Treasurer for deposit into the State Treasury to the credit of the State Plant Board Fund for the sole use of the board. Each license shall expire on the last day of December of the year for which it is issued; provided that any license shall be valid through ninety (90) days of

the next ensuing year or until the issuance of the renewal license, whichever event first occurs, if the holder thereof has filed a renewal application with the board on or before December 31st of the year for which the current license was issued. Any new applicant who fails to obtain a license within fifteen (15) working days after notification of the requirement to obtain a license, or any licensee who fails to comply with license renewal requirements, shall pay a thirty dollars ($30.00) late fee in addition to the license fee.

(c) The form and content of the commercial feed license application shall be established by rules adopted by the board.

(d) The board may, at any time, request from a license applicant or licensee copies of labels and labeling in order to determine compliance with the provisions of this act.

(e) The board is empowered to refuse to issue a license to any person not in compliance with the provisions of this act. The board may suspend or revoke any license issued to any person found not in compliance with any provision of this act. The board may place conditions that limit production or distribution of a particular commercial feed on the license of any person found not to be in compliance with this act. No license shall be conditioned, suspended, refused or revoked unless the applicant or licensee shall first be given an opportunity to be heard before the board in order to comply with the requirements of this act.

(f) In order to be exempt from the provisions of this act, integrated operators, as defined in Section 3, shall submit an application for exemption on a form provided or approved by the board accompanied by an application fee of ten dollars ($10.00) for each facility. The board shall remit such application fees to the State Treasurer for deposit into the State Treasury to the credit of the State Plant Board Fund to be used solely by the board.

(g) A grower's production of unmanipulated poultry litter is exempt from the provisions of this act.

SECTION 5. (2-37-105) Labeling.

A commercial feed shall be labeled as follows:

(a) In the case of a commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following information:

(1) The quantity statement (may be stated in metric units in addition to the required avoirdupois).

(2) The product name and brand name, if any, under which the commercial feed is distributed.

(3) The guaranteed analysis stated in such terms as the board by regulation determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the Association of Analytical Chemists International.

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed, provided that the board by regulation may permit the use of a collective term for a group of ingredients which perform a similar function, or the board may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if the board finds that such statement is not required in the interest of consumers.

(5) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

(6) Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the board may require by regulation as necessary for their safe and effective use.

(7) Such precautionary statements as the board by regulation determines are necessary for the safe and effective use of the commercial feed.

(8) If a drug containing product is used:

(A) The purpose of the medication (claim statement), and

(B) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed as defined by rule.

(b) In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip or other shipping document, bearing the following information:

(1) Name and address of the manufacturer;

(2) Name and address of the purchaser;

(3) Date of delivery;

(4) The product name and net weight (may be stated in metric units in addition to the required avoirdupois) of each commercial feed and each other ingredient used in the mixture;

(5) Adequate directions for use and precautionary statements for all customer-formula feeds containing drugs and for such other feeds as the board may require by regulation as necessary for their safe and effective use.

(6) If a drug containing product is used:

(A) The purpose of the medication (claim statement); and

(B) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed as defined by rule.

SECTION 6. (2-37-106) Misbranding.

A commercial feed shall be deemed to be misbranded if:

(a) its labeling is false or misleading in any particular;

(b) it is distributed under the name of another commercial feed;

(c) it is not labeled as required in Section 5 of this act;

(d) it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the board;

(e) any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

SECTION 7. (2-37-107) Adulteration.

A commercial feed shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or

(2) If it bears or contains any added poisonous, added deleterious, or added non-nutritive substance which is unsafe within the meaning of Section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity: or (ii) a food additive); or

(3) If it is, or it bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act; or additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act; or

(4) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 408 (a) of the Federal Food, Drug, and Cosmetic Act; provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of Section 408 (a) of the Federal Food, Drug, and Cosmetic Act; or

(5) If it is, or it bears or contains any color additive which is unsafe within the meaning of Section 706 of the Federal Food, Drug and Cosmetic Act; or

(6) If it is, or it bears or contains any new animal drug which is unsafe within the meaning of Section 512 of the Federal Food, Drug, & Cosmetic Act; or

(7) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for feed; or

(8) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or

(9) It is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter which is unsafe within the meaning of Section 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act; or

(10) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(11) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to Section 409 of the Federal Food, Drug, and Cosmetic Act; or

(12) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor; or

(13) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling; or

(14) If it contains viable weed seeds in amounts exceeding the limits which the board shall establish by rule; or

(15) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the board to assure that the drug meets the requirement of this act as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such regulations, the board shall adopt the current good manufacturing practice (CGMP) regulations for Type A Medicated Articles and Type B and Type C Medicated Feeds established under authority of the Federal Food, Drug, and Cosmetic Act, unless the board determines the current good manufacturing regulations are not appropriate to the conditions which exist in this state.

SECTION 8.(2-37-108) Prohibited Acts.

The following acts and the causing thereof within the state are hereby prohibited:

(a) The manufacture or distribution of any commercial feed that is adulterated or misbranded.

(b) The adulteration or misbranding of any commercial feed.

(c) The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of Section 7 of this act.

(d) The removal or disposal of a commercial feed in violation of any order under Section 12 of this act.

(e) The failure or refusal to register in accordance with Section 4 of this act.

(f) The violation of Section 13(f) of this act.

(g) Failure to pay inspection fees and file reports as required by Section 9 of this act.

SECTION 9. (2-37-109) Inspection Fees and Reports.

(a) An inspection fee at the rate of thirty cents ($.30) per ton shall be paid on commercial feeds distributed in this state by the person whose name appears on the label as the manufacturer, guarantor or distributor, except that a person other than the manufacturer, guarantor or distributor may assume liability for the inspection fee, subject to the following:

(1) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor.

(2) No fee shall be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as ingredients therein.

(3) No fee shall be paid on commercial feeds which are used as ingredients for the manufacture of commercial feeds. If the fee has already been paid, credit shall be given for such payment.

(4) On commercial feed distributed in quantities of twenty-five (25) tons or less, a minimum fee of ten dollars ($10.00) per quarterly report shall be paid. A tonnage report and minimum fee is due for each reporting period, even though no distribution of commercial feeds occurred in the state during that period.

(b) Each person who is liable for the payment of such fee shall:

(1) File, not later than the last day in January, April, July, and October of each year, quarterly statement, setting forth the number of net tons of commercial feeds distributed in this state during the preceding three (3) months; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph (a) of this section. Inspection fees which are due and owing and have not been remitted to the board within fifteen (15) days following the date due shall have a penalty fee of fifteen percent (15%) or twenty-five dollars ($25.00), whichever is the higher, added to the amount due when payment is finally made. The assessment of this penalty fee shall not prevent the board from taking other actions as provided in this act.

(2) Keep such records as may be necessary or required by the board to indicate accurately the tonnage of commercial feed distributed in this state, and the board shall have the right to examine such records to verify statements of tonnage. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of the license of a distributor. However, no license shall be canceled or revoked before the distributor has been given an opportunity to be heard before the board and to pay the fees owed under this section.

(c) Fees collected shall constitute a fund for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for administration of this act and shall be deposited into the State Treasury to the credit of the State Plant Board Fund.

SECTION 10. (2-37-110) Regulations.

(a) The board is authorized to promulgate such reasonable regulations as may be necessary for the efficient enforcement of this act. In the interest of uniformity the board shall by regulation adopt, unless the board determines that they are inconsistent with the provisions of this act or are not appropriate to conditions which exist in this state, the following:

(1) The Official Definitions of Feed Ingredients and Official Feed Terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization; and

(2) Any regulation promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act, provided, that the board would have the authority under this act to promulgate such regulations.

(b) Before the issuance, amendment, or repeal of any regulation authorized by this act, the board shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties, including all current registrants, adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the board shall take appropriate action to issue the proposed regulation or to amend or repeal an existing regulation. The provisions of this paragraph not withstanding, if the board, pursuant to the authority of this act, adopts the Official Definitions of Feed Ingredients or Official Feed Terms as adopted by the Association of American Feed Control Officials, or regulations promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act, any amendment or modification adopted by said Association or by the U. S. Secretary of Health and Human Services in the case of regulations promulgated pursuant to the Federal Food, Drug and Cosmetic Act, shall be adopted automatically under this act without regard to the publication of the notice required by this paragraph (b), unless the board by order specifically determines that said amendment of modification shall not be adopted.

SECTION 11. (2-37-111) Inspection, Sampling, and Analysis.

(a) For the purpose of enforcement of this act, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees designated by the board, upon presenting appropriate credentials, and notice to the owner, operator, or agent in charge, are authorized:

(1) to enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, or held for distribution, or to enter any vehicle being used to transport or hold such feeds; and

(2) to inspect at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling herein. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the Good Manufacturing Practice Regulations established under Section 7(15) of this act.

(b) Notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection the person in charge of the facility or vehicle shall be so notified.

(c) If the owner of any factory, warehouse, or establishment described in paragraph (a), or his agent refuses to admit the board or its agent to inspect in accordance with paragraphs (a) and (b), the board is authorized to obtain from any state court a warrant directing such owner or his agent to submit premises described in such warrant to inspection.

(d) For the enforcement of this act, the board or its designated agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

(e) Sampling and analysis shall be conducted in accordance with methods published by the Association of Analytical Chemists International, or in accordance with other generally recognized methods.

(f) The results of all analyses of official samples shall be forwarded by the board to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a

commercial feed has been adulterated or misbranded and upon request within thirty (30) days following the receipt of the analysis the board shall furnish to the registrant or licensee a portion of the sample concerned.

(g) The board, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in paragraph (o) of Section 3 and obtained and analyzed as provided for in paragraphs (d) and (e) of Section 11 of this act.

SECTION 12. (2-37-112) Detained Commercial Feeds.

(a) Withdrawal from distribution orders. When the board or its authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this act or any of the prescribed regulations under this act, the board may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the board or the court. The board shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained the board may begin, or upon request of the distributor or registrant, shall begin proceedings for condemnation. A withdrawal from distribution order issued under this section expires thirty (30) days after the day it was first issued unless condemnation proceedings have begun in a court of competent jurisdiction.

(b) Condemnation and Confiscation. Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the board to a court of competent jurisdiction in the area in which the commercial feed is located. In the event the court finds the commercial feed to be in violation of this act and orders the condemnation of the commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. However, in no instance shall the disposition of the commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the commercial feed or for permission to process or re-label the commercial feed to bring it into compliance with this act. If the court orders the sale of the feed, the proceeds from the sale shall be remitted to the State Treasurer to be credited to the General Revenue Fund.

SECTION 13. (2-37-113) Penalties.

(a) Any person convicted of violating any of the provisions of this act or who shall impede, hinder, or otherwise prevent, or attempt to prevent, the board or its authorized agent in performance of his duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor punishable by a fine of

not more than fifty dollars ($50.00) for the first violation, and not more than two hundred dollars ($200) for each subsequent violation and the proceeds from such fines shall be remitted into the State Treasury to the credit of the General Revenue Fund.

(b) Nothing in this act shall be construed as requiring the board or its representative to:

(1) report for prosecution;

(2) institute seizure proceedings; or

(3) issue a withdrawal from distribution order, as a result of minor violations of the act, or when the board believes the public interest will best be served by suitable notice of warning in writing.

(c) In all prosecutions for violations of this act, the certificate of the analyst, or other officer making the analysis or examination, when sworn to or subscribed by the analyst or officer, shall be prima facie evidence of the facts therein certified.

(d) The board is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any regulation promulgated under the act notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(e) Any person adversely affected by an act, order, or ruling of the board made pursuant to the provisions of this act may within forty-five (45) days thereafter bring action in the Pulaski County Chancery Court for judicial review of such actions. The form of the proceeding may be any which may be provided by statutes of this state to review decisions of administrative agencies, or in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgements or writ or prohibitory or mandatory injunctions.

(f) Any person who uses to his own advantage, or reveals to other than the board or officers of the board or other officers of state agencies, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this act, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a Class C misdemeanor; provided, that this prohibition shall not be deemed as prohibiting the board or its authorized agent, from exchanging information of a regulatory nature with authorized officials of the United States Government, or of other states, who are similarly prohibited by law from revealing this information.

SECTION 14. (2-37-114) Cooperation with Other Entities.

The board may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the United States Government, and private associations in order to carry out the purpose and provisions of this act.

SECTION 15. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 17. All laws and parts of laws in conflict with this act are hereby repealed.